

REMARKS

In its response dated 01 December 2004, Applicants respectfully requested reconsideration of the restriction requirement. Applicants elected to prosecute claims 25-46 (Group II) and to withdraw claims 1-24 and 47-92. Therefore, claims 1-24 and 47-92 are withdrawn, but may be reinstated. Claims 25-46 are currently pending in this application and are rejected to by the Examiner under 35 USC § 102.

Restriction Requirement Revisited

Applicants believe that the arcane language of CFR § 1.141 has confused the situation. The Examiner's recitation of Rule 141 is close to right, but the difference between the Rule and how the Examiner recounts it is important. The Rule, to be interpreted in light of the MPEP, requires restriction only if two inventions and **independent and distinct**. That is why the MPEP gives extensive guidance regarding restriction of inventions that arguably are distinct, though they clearly are not independent. The Examiner has never argued that the five independent claims are "independent"¹ in the sense required by Rule 141, as set out in MPEP § 802.01.

Applicants urged that there would be no serious burden to examining the claims in no more than two groups. The Examiner conceded the lack of burden without response. This is dispositive under the (B) prong of the test set out in MPEP § 802.01. The Examiner was required to and chose not to prove a SERIOUS BURDEN, as needed to maintain a restriction between merely distinct (not independent) inventions.

It also is dispositive that the Examiner considers the claims not to be patentably distinct. Examiner incorrectly states that **Applicants** admitted that they were not distinct. Applicant were more careful than that. We said:

Applicants ask whether the Examiner is prepared to say that claims 1 and 63 (and 25) are patentably distinct. The difference between the two claims appears in the first element in just three letters: claim 1 includes "associating respective selling *in*-dates with a good"; claim 63 includes identical limitations applied to "selling *out*-dates". If the Examiner asserts that these claims are patentably distinct and nonobvious from one another, that will

¹ It is difficult to imagine a more arcane twist of language than independent (not dependent claims) that fail the test for being independent (as opposed to distinct.) That's what we have here.

strengthen the patent considerably and may justify acquiescing in the restriction. However, the Examiner has not yet made the unequivocal statement that claims 1 and 63 (and 25) are, in the Examiner's opinion, patentably distinct and all unobvious from one another. Without that determination, restriction is improper.

Now, the Examiner asserts that the claims are not patentably distinct. From MPEP § 803.01, at 800-4 (Aug 2001):

If there is an express admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. 103, restriction should not be required. *In re Lee*, 199 USPQ 108 (Comm'r Pat. 1978).

The **Examiner has now admitted** that the restricted claims are not patentably distinct and surely has not argued to the contrary, so the case law and MPEP make it clear that "restriction should not be required."

Applicants respectfully urge that even a final restriction requirement can be withdrawn when it is mistaken.

Rejections Under 35 USC § 102

Claims 25-46 are rejected to by the Examiner under 35 USC § 102(e) as being anticipated by Landvater (U.S. Patent No. 6,609,101).

Claim 25

Claim 25 includes the limitations:

*A computer implemented method of rolling up projected demand requirements and presentation quantities for a plurality of selling locations, including: ****

associating a good and presentation dates with one or more named displays;

These limitations reference a presentation quantity, which is an amount of inventory needed to present an attractive display, as opposed to treating presentation inventory as safety stock. In cols. 14-15, Landvater treats inventory on the shelves as mere safety stock. There is no mention in the reference of presentation quantities that are needed to present an attractive display; the term "presentation quantity" is not used by Landvater and "shelf configuration" is not the same. On pages 9-10 of the application, in formulas, and consistently throughout, the term presentation quantity is given concrete meaning:

Another real world consideration is **presentation quantities**. Selling locations may choose to display goods in specials shelves, racks or other presentation factors in order **make an attractive presentation which enhances sales**. Fixtures used for presentation may include tables, rounders, four walls, wall shelving, promotion tables, tills or display windows. Large square footage stores may have more presentation fixtures than small square footage locations. Presentation quantities also may vary for reasons other than location physical characteristics, such as the sales level at the location.

It is useful to associate presentation quantities and presentation dates (e.g., start and end dates for the presentation) in advance of use in ordering, post allocation or distribution analysis.

See, *also*, claims 40-45. There is no teaching or suggestion of stocking to satisfy presentation quantity requirements in Landvater.

Therefore, claim 25 should be allowable over Landvater.

Further, **claim 25** includes the limitations:

naming a plurality of display types used by a plurality of selling locations;

associating numbers of the named displays present at the selling locations with the selling locations;

These limitations are not found in Landvater. They present an intermediate abstraction and refinement that is not taught in or suggested by the reference. For instance, Landvater FIGS. 14-15 do not reference display type naming. Col. 1, lines 40-50 and col. 2, lines 20-27 call out deficiencies of earlier systems, not features of Landvater's system. Lack of an display type naming is not mentioned. Cols. 14-15 is where FIGS. 14-15 are explained, clearly without mention of display type naming. The most extensive discussion of shelf configuration information is in col. 14, lines 37-58:

Database 36 preferably stores the following shelf configuration information: the number of facings (product facing the consumer), the minimum number of rows deep required to create an attractive display, the maximum number of rows deep which will fit in the space allocated to this product, the amount of backroom safety stock (safety stock maintained in a location other than the store shelf), and the date this configuration becomes effective. For example, a product may have three facings, and should have a minimum of one row deep (or three products) to create an attractive display. The maximum number of rows is six, since no more than eighteen products will fit in the space allocated to this product. No additional units should be kept as safety stock in addition to the quantity on the shelf. Another example would be a mattress, where one mattress is kept on the display floor, and another is kept

in the back. There is not enough room to store two mattresses on the display floor, but it is important to have two mattresses in stock. If a mattress were not stocked in the back, and someone were to buy the mattress on display, there would be nothing to display until the next shipment from the suppliers or supplier.

Neither this passage nor the remainder of cols. 14-15 mention display type naming.

Therefore, claim 25 should be allowable over Landvater.

Moreover, **claim 25** includes the limitations:

associating respective time elements, corresponding to times for an action to lead to availability of the good at the selling locations, with the good at the selling locations;

looking forward from a date related to the action and rolling up projected demand requirements for one or more predetermined selling periods, which commence at one or more dates related to the respective time elements, for the good at the selling locations, while taking into account association of the good with the named displays in the respective selling locations.

An example of “an action” is placing an order (e.g., in claims 35-37). Cols. 9-10 are about manufacturing capacity planning and cols. 14-15 are about safety stock, not about replenishment or ordering, which is discussed in cols. 13-14. The discussion of replenishment or ordering in cols. 13-14 does not take into account named displays, because named displays are not discussed in the reference.

For these additional reasons, claim 25 should be allowable over Landvater.

Claims 26-27

Claims 26-27 should be allowable over Landvater for at least the same reasons as claim 25 from which they depend.

Claims 28-29

Claim 28 includes the limitation:

availability further includes preparing the delivered goods for sale

This limitation is not found in Landvater, which focuses on reducing the number of computer cycles required for replenishment planning. At col. 13, lines 49-58:

Assuming for example, that two thousand computer instructions need to be executed for each time period which is planned, a company planning fifty-two weeks into the future in daily time periods would have to execute 728 thousand computer instructions for each product. If this same company were to plan four weeks into the future in daily time periods and remaining forty-eight weeks in weekly time periods, only 152 thousand computer instructions

would have to be executed, or about twenty percent of the instructions needed to plan entirely in days.

There is no mention in the reference of taking into account the time between when goods are delivered and when they are unpacked. Nor are details given corresponding to the limitations of claim 29. Therefore, claims 28-29 should be allowable over Landvater.

Claims 30-34

Claims 30-34 should be allowable over Landvater for at least the same reasons as claim 25 from which they depend.

Claims 35-37

Claims 35-37 give examples of actions, as discussed above in claim 25. These claims should be allowable for at least the reasons explained in discussion of claim 25, above.

Claims 38-39

Claims 38-39 should be allowable over Landvater for at least the same reasons as claim 25 from which they depend.

Claims 40-45

Claims 40-45 includes the limitations that roll up a presentation quantity as an amount of inventory needed to present an attractive display, as opposed to treating presentation inventory as safety stock. Recall that in cols. 14-15, Landvater treats inventory on the shelves as safety stock. There is no mention in the reference of presentation quantities that are needed to present an attractive display; the term "presentation quantity" is not used by Landvater and "shelf configuration" is not the same. For instance, in claim 44:

the presentation quantity used in the roll up is the largest presentation quantity associated with the good at the selling location for any day of the predetermined selling period.

On pages 9-10 of the application, in formulas, and consistently throughout, the term presentation quantity is given concrete meaning:

Another real world consideration is **presentation quantities**. Selling locations may choose to display goods in specials shelves, racks or other presentation factors in order **make an attractive presentation which enhances sales**. Fixtures used for presentation may include tables,

rounders, four walls, wall shelving, promotion tables, tills or display windows. Large square footage stores may have more presentation fixtures than small square footage locations. Presentation quantities also may vary for reasons other than location physical characteristics, such as the sales level at the location.

It is useful to associate presentation quantities and presentation dates (e.g., start and end dates for the presentation) in advance of use in ordering, post allocation or distribution analysis.

There is no teaching or suggestion of stocking to satisfy presentation quantity requirements in Landvater.

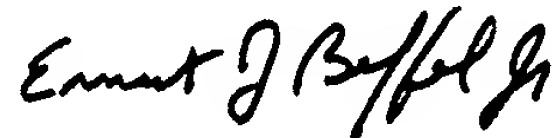
Therefore, claims 40-45 should be allowable over Landvater.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance and solicit acceptance of the claims.

The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 to 5:30 PST, Monday through Friday, and can be reached at his cell phone (415) 902-6112 most other times.

Respectfully submitted,



Dated: 17 March 2005

Ernest J. Beffel, Jr., Reg. No. 43,489

HAYNES BEFFEL & WOLFELD LLP
P.O. Box 366
Half Moon Bay, CA 94019